



## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its regulation “Duties of Furnishers of Information to Consumer Reporting Agencies” (“Information Furnishers Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Bureau of Consumer Financial Protection (“CFPB”) of the furnisher provisions (subpart E) of the CFPB’s Regulation V regarding other entities. The current clearance expires on July 31, 2022.

**DATES:** Comments must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Information Furnishers Rule, PRA Comment, P135407,” on your comment and file your comment online at <https://www.regulations.gov/>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution

Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Gorana Neskovic, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2322, 600 Pennsylvania Ave., NW, CC-8232, Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:**

*Title:* Duties of Furnishers of Information to Consumer Reporting Agencies.

*OMB Control Number:* 3084-0144.

*Type of Review:* Extension without change of a currently approved collection.

*Affected Public:* Private Sector: Businesses and other for-profit entities.

*Estimated Annual Burden Hours:* 17,483 hours.

*Estimated Annual Labor Costs:* \$966,143.

*Abstract:*

The Dodd-Frank Act<sup>1</sup> transferred most of the FTC’s rulemaking authority for the furnisher provisions of the Fair Credit Reporting Act (“FCRA”)<sup>2</sup> to the CFPB. The FTC, however, retains rulemaking authority for motor vehicle dealers that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.<sup>3</sup> In addition, the FTC retains its authority to enforce the furnisher provisions of the FCRA and rules issued under those provisions. Accordingly, the FTC and CFPB have overlapping enforcement authority for many entities subject to CFPB’s Regulation V (subpart E) and the FTC has sole enforcement authority for the motor vehicle dealers subject to the FTC rule.

Under section 660.3 of the FTC’s Information Furnishers Rule<sup>4</sup> and section

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> 15 U.S.C. 1681 *et seq.*

<sup>3</sup> See Dodd-Frank Act, § 1029(a), (c).

<sup>4</sup> 16 CFR part 660.

1022.42 of the CFPB Rule,<sup>5</sup> furnishers must establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that they furnish to a consumer reporting agency (“CRA”) for inclusion in a consumer report.<sup>6</sup> Section 660.4 of the FTC Rule and section 1022.43 of the CFPB Rule require that entities which furnish information about consumers to a CRA respond to direct disputes from consumers. These provisions also require that a furnisher notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant (“F/I dispute”).

**Burden statement:**

FTC staff estimates that approximately 6,385 information furnishers are subject to the FTC’s Information Furnishers Rule and its enforcement authority.<sup>7</sup>

**Section 660.3 of FTC Rule/Section 1022.42 of CFPB Rule:**

**A. Burden Hours**

Section 660.3 of the FTC’s Furnisher Rule and section 1022.42 of Regulation V

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<sup>5</sup> 12 CFR Part 1022.

<sup>6</sup> The rule also provides that an entity is not a furnisher when it: provides information to a CRA solely to obtain a consumer report for a permissible purpose under the FCRA; is acting as a CRA as defined in section 603(f) of the FCRA; is an individual consumer to whom the furnished information pertains; or is a neighbor, friend, or associate of the consumer, or another individual with whom the consumer is acquainted or who may have knowledge about the consumer’s character, general reputation, personal characteristics, or mode of living in response to a specific request from a CRA.

<sup>7</sup> The CFPB estimates that there are 16,000 furnishers, excluding motor vehicle dealers that are subject to the FTC’s jurisdiction, with an allocation to that agency of 63% of the burden or 10,080 respondents. *See* CFPB Supporting Statement Part A, Fair Credit Reporting Act (Regulation V) 12 C.F.R. 1022 (OMB Control Number: 3170-0002) ([https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202008-3170-001](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202008-3170-001)). Allocating the remaining 37% of the burden to the FTC yields 5,920 respondents, excluding motor vehicle dealers that are subject to the FTC’s jurisdiction. FTC staff estimate that there are approximately 46,525 motor vehicle dealers in the U.S. *See* U.S. Census Bureau, All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2019, *available at* <https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&n=44111%3A44112&tid=CBP2019.CB1900CBP&hidePreview=true&nkd=EMPSZES~001,LFO~001> (listing 21,427 establishments for “new car dealers,” NAICS code 44111, and 25,098 establishments for “used car dealers,” NAICS code 44112). It is difficult to determine precisely the number of motor vehicle dealers that are subject to the FTC’s jurisdiction and that are furnishers. Given the restrictions in section 1029(a) of the Dodd-Frank Act that motor vehicle dealers subject to the FTC’s jurisdiction are those that routinely assign consumer contracts governing retail credit to an unaffiliated third-party finance source, Commission staff believes the number is *de minimis*. Accordingly, the FTC estimates that 1% of motor vehicle dealers subject to the FTC’s jurisdiction are furnishers of information to CRAs or 465 respondents. Thus, 465 motor vehicle dealers + 5,920 other entities = 6,385 respondents for the FTC’s burden calculations.

(subpart E) require furnishers to establish written policies and procedures regarding the accuracy and integrity of information relating to consumers that they furnish to a CRA. Furnishers must also review these policies and procedures periodically and update them as necessary to ensure their continued effectiveness. FTC staff estimate a yearly recurring burden of 2 hours for training to help ensure continued compliance regarding written policies and procedures for the accuracy and integrity of the information furnished to a CRA about consumers.<sup>8</sup> This yields an annual hours burden of 12,770 hours (6,385 respondents × 2 hours for training).

#### B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use managerial and/or professional technical personnel to train company employees on continued compliance with the information furnisher requirements under the FTC and CFPB Rules. This yields estimated annual labor costs of \$773,096 (12,770 hours × \$60.54<sup>9</sup>).

#### Section 660.4 of FTC Rule/Section 1022.43 of CFPB Rule:

Section 660.4 of the FTC's Information Furnishers Rule and section 1022.43 of the CFPB's Regulation V (subpart E) require furnishers to respond to direct disputes from consumers and notify consumers by mail or other means (if authorized by the consumer) within five business days after making a determination that a dispute is frivolous or irrelevant.

#### A. Burden Hours

FTC staff estimate that the burden necessary to prepare and distribute F/I notices

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<sup>8</sup> 74 FR 31484, 31505 (July 1, 2009 FTC and Federal financial agencies' final rules).

<sup>9</sup> <http://www.bls.gov/news.release/ocwage.nr0.htm>: "Occupational Employment and Wages -- May 2017," Bureau of Labor Statistics, U.S. Department of Labor, released March 30, 2018, Table 1 ("National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017) (hereinafter, "BLS Table 1"). See mean hourly wage for "Training and Development Managers."

is approximately 14 minutes per notice.<sup>10</sup> Based on the calculations below, this yields an annual hours burden of 2,635 hours.

1. 21,720 total F/I disputes<sup>11</sup>
2. Motor vehicle dealer-only furnisher disputes are assumed to be 4% of the total:  $21,720 \times .04 = 869$  F/I disputes<sup>12</sup>
3. 20,851 respondents  $(21,720 - 869 \text{ FTC only}) \div \text{by } 2 = 10,425$  F/I disputes subject to FTC shared jurisdiction
4.  $869 \text{ FTC only F/I disputes} + 10,425 \text{ additional F/I disputes} = 11,294$  F/I dispute notices for the FTC's jurisdiction
5.  $11,294 \text{ F/I disputes} \times 14 \text{ minutes each} = 2,635$  hours

B. Labor Costs

Labor costs are derived by applying appropriate estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use skilled administrative support personnel to provide the required F/I dispute notices to consumers. This yields estimated annual labor costs of \$67,245  $(2,635 \text{ hours} \times \$25.52^{13})$ .

FTC staff believes that these information collection requirements impose negligible capital or other non-labor costs, as the affected entities are already likely to have the necessary supplies and equipment (e.g., offices and computers) to administer

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<sup>10</sup> 74 FR at 31505.

<sup>11</sup> *Id.* at 31506 n. 58.

<sup>12</sup> FTC staff believes that 4% is a reasonable estimate based on recent data. See “Key Dimensions and Processes in the U.S. Credit Reporting System: A review of how the nation’s largest credit bureaus handle consumer data,” December 2012, pp. 14, 29, 31, 34. The CFPB report noted that almost 40% of all consumer disputes at the nationwide CRAs, on average, can be linked to collections. It stated that collection trade lines generate significantly higher numbers of consumer disputes than other types of trade lines – specifically, four times higher than auto-related dispute rates. These figures seem to suggest that almost 10% of all consumer disputes at the nationwide CRAs, on average, can be linked to auto-related disputes. When the FTC issued its final Rule, FTC staff estimated that 40% of direct disputes would result in the sending of F/I dispute notices. See 74 FR 31506 n.58. The FTC’s estimate of 4% is based on taking forty percent of the 10% of all consumer disputes at the nationwide CRAs, on average, linked to auto loans.

<sup>13</sup> The revised figure is an average of Bureau of Labor Statistics mean hourly wages for potentially analogous employee types: first-line supervisors of office and administrative support workers (\$29.81); bookkeeping, accounting, and auditing clerks (\$21.10); brokerage clerks (\$28.11); eligibility interviewers, government programs (\$23.07). See BLS Table 1. This averages to \$25.52 per hour, rounded.

the information collections described above.

*Request for Comments:*

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the Information Furnishers Rule.

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of providing the required information to consumers. All comments should be filed as prescribed in the ADDRESSES section above, and must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**. Write “Paperwork Reduction Act: FTC File No. P072108” on your comment. Your comment – including your name and your state – will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will

be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write “Paperwork Reduction Act: FTC File No. P072108” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610, Washington, DC 20024. If possible, please submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential” – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with

FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted at [www.regulations.gov](http://www.regulations.gov), we cannot redact or remove your comment, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

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